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SUPREME COURT OF THE UNITED STATES.

No. 27.

PAULINA WHITING ET AL., APPELLANTS,

VERSUS

THE BANK OF THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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Pleas before the honorable John McLean, one of the judges of the seventh circuit court of the United States, in and for the Kentucky district, at the May term, in the year 1835.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of May, in the year of our Lord, 1833, came the heirs of Ruggles Whiting, and others, by counsel, into the clerk's office of the court aforesaid, and filed the following bill, to wit:

To the honorable the Circuit Court of the United States for the District of Kentucky, in chancery sitting: Paulina S. Whiting and Helen B. Whiting, heirs at law of Ruggles Whiting, deceased, and James Richardson, administrator of the said decedent, and Enfield Johnson and Gabriel J. Johnson, complaining, shew:

That on the day of 1823, the President, Directors, and Company of the Bank of the United States, commenced their suit in chancery in your honorable court, against your complainants, Enfield and Gabriel, and the said decedent, who was then living, upon their bill filed, alleging that the said Whiting, and Enfield and Gabriel, and a certain James D. Breckenridge, on the 9th day of August, 1820, executed their mortgage to the said President, Directors, and Company, upon several lots or pieces of land, situate in, and contiguous to, the town of Louisville, to secure to them the sum of $9,931 37, which the said R. Whiting owed to them; that the said sum of money had not been paid; and praying, among other things then the said mortgaged estate should be sold to satisfy the said demand, with interest, &c.; and a subpœna issuing against your said complainants, Enfield and Gabriel, and and the decedent, Ruggles, and being served, such proceedings were thereupon had, that at the November term, 1826, a decree was pronounced in the said suit, requiring a sale of the mortgaged estate, and appointing commissioners to make sale, &c., and in conformity to the requisitions of the said decree, on the 2d day of March, 1827, the said several lots were sold by one of the commissioners so appointed, for the sum of seven thousand dollars, and the said President, Directors, and Company became the purchasers.

And at the May term of the said court, 1827, the said sale was affirmed by the final order or decree of this honorable court, all of will more fully appear by reference to the said bill, mortgage, subpœna, decree, &c., remaining of record in your honorable court, and which are made parts of this bill.

Your complainants would further state, that long previous to the sale by the commissioner aforesaid, that is to say, on the day of 183 , the said Ruggles Whiting departed this life intestate, leaving your complainants, Paulina and Helen, and a certain L. R. Whiting, his only children and heirs at law, the latter of whom also shortly afterwards died intestate and without issue, and consequently the complainants, Paulina and Helen, are his heirs at law; and your complainants would moreover state, that at the time of the said sale the said Ruggles Whiting was dead, and all of his children and heirs

aforesaid were infants, under the age of 21; nay, your complainant Helen did not attain her full age until the day of 1831.

And your complainants would moreover state, that the property so mortgaged and sold, was sacrificed, being sold at a price very far below its value, without the knowledge of the aforesaid representatives and heirs of Whiting, without revivor, and without making Breckenridge a party, to the great prejudice of your complainants, and particularly of the said Paulina and Helen. Insomuch do your complainants believe they are prejudiced by the said proceedings, that the estate sold was well worth, and would sell at a price at least equal to five times the sum for which it did actually. Indeed your complainants have reason to believe and charge, that so inconsiderate was the commissioner in making the sale, that he exposed several lots, probably all of them at once, and caused them to be sold at once.

Your complainants set forth and assign, as error in the record and proceedings, and decree, and sale aforesaid, the errors following, to wit:

1st. It was irregular and erroneous to entertain the bill and pronounce the decree for foreclosure and sale without the mortgager, Breckenridge, being made a defendant or party.

2d. It was irregular and erroneous to sell the property mortgaged without a revival of the suit against the heirs of the decedent, Whiting.

3d. It was unjust and oppressive to sell in the manner and at the price that the sale did take place.

Your complainants pray the proceedings and decrees and sale aforesaid revived and set aside, that the cause be opened, that they be permitted to redeem, &c., with such other relief as their case may require, &c. Haggin, &c., for complainants. On which bill there was issued the following subpœna, to wit: The United States of America to the Marshal of the Kentucky district, greeting: You are hereby commanded to summon the President, Directors, and Company of the Bank of the United States to appear before the judges of our seventh circuit court of the United States of America, in and for the district of Kentucky, at the capitol in Frankfort, on the first Monday in November next, to answer a bill in chancery, exhibited against them in our said court, by Paulina S. Whiting and Helen B. Whiting, heirs at law of Ruggles Whiting, deceased, and James Richardson, administrator of said decedent, Enfield Johnson and Gabriel J. Johnson, deceased; and this they shall in no wise omit, under the penalty of four hundred dollars each, and have then there this writ.

In testimony whereof, John Marshall, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this third day of June, A. D. 1833, and in the fifty-ninth year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return:—Executed on J. Tilford, President, and Matthew T. Scott, Cashier of the Lexington Branch of the Bank of the United States, on 6th September, 1833, and on the President and Cashier of the Louisville Branch Bank of the same, on the 14th September, 1833, by order of plaintiff's attorney.

JNO. M. McCALLA, *M. K. D.*

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And afterwards, to wit, at the November term of the court aforesaid, in the year 1833, came the defendants, by their counsel, and filed the following demurrer to the complainants' bill, and the argument of said counsel being heard, time is given complainants' counsel to reply, which demurrer is as follows, to wit:

The defendants not acknowledging the jurisdiction of this court to hear or decree any thing desired by the complainants, but protesting against the same, and not admitting any thing in the said bill alleged, to their prejudice, do demur thereto and say, that by the course of this court there is no sufficient ground set out for a review of any thing decreed in said original cause, nor by the practice of this court, in such cases, a bill of review *avail* for the complainants in such a case as is alledged, and if the complaint were sustainable, too great a length of time has elapsed to permit to be heard; therefore they pray the decision of this court, whether they shall be demanded to make any other or further answer thereto, &c.

PIRTLE, *P. D.*

And afterwards, to wit, at a subsequent day of the term aforesaid and year aforesaid. The court being now sufficiently advised of and concerning the defendants' demurrer to the complainants' bill, do consider that the same be overruled, and that the defendants' answer to the complainants' bill, so far as relates to the proceedings since the decree ordering the sale, and as to the death of Ruggles Whiting.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1834, came the defendants, by their counsel, and filed a special plea and answer herein, and the complainants waives the necessity of affixing the corporate seal to said answer.

Which answer is as follows, to wit:

The answer of the President, Directors, and Company of the Bank of the United States, to a bill in chancery in the nature of a bill of review exhibited against them in the circuit court of the United States, for the district of Kentucky, by Paulina S. Whiting and Helen B. Whiting, James Richardson, Enfield Johnson, and Gabriel J. Johnson.

These respondents saving and reserving, &c., for answer thereto, or so much thereof as they are advised, it is material for them to answer; say that they do not know that the said Paulina and Helen are the children and heirs of said Ruggles Whiting, or that the said Richardson was the administrator of said decedent, and they require him to produce letters of administration, if he have any such. It is true that a deed of mortgage was executed by the said persons, as stated in the bill, and that a decree of foreclosure and sale was had thereon in your honorable court; but they deny that the said Breckenridge, or the said Ruggles Whiting, had any title to the property mentioned in the said mortgage, and they allege that the said Johnson had and held the right and title to the said property exclusively, and that the said Whiting and the said Breckenridge joined in the said deed of mortgage not to convey to the said respondents any title which they had, but to complete the agreements

made with themselves, and to show, as they deemed it, this transaction more fully. They allege most positively that the said sale made by the commissioner, of the said two parcels of ground, was in strict conformity to the decree, and in every respect fair and proper. They deny that he caused both the lots to be sold at once and together, but alleged that he offered the same in such form as would (or was calculated to) procure the best bids therefor. They allege that the said lots were bought by them at a fair and full price, and at least equal to their market value. They state that they do not know at what time the said Ruggles Whiting departed this life, but they are very sure that no one in Louisville knew any thing of his death. At the time of said sale they do not admit that he was not living at that time, but require proof thereof, as the sale was fair and at a full price, and no title was in the said Whiting or his heirs. As the title of the said Johnsons and the said Whiting (if any) was foreclosed and a sale decreed, they contend, that as the parties could have no further concern in the property than that it should sell for a fair price the death of the said Whiting after the decree that but before the sale should not now be deemed sufficient ground on which to vacate the sale. They state, that having no knowledge of the death of said Whiting, and believing every thing respecting the said sale to be fair and regular, they shortly after the said sale pulled down and removed an indifferent dwelling house, built on said five acre lot, standing where Fifth Cross street extended in said city would run, and caused said street to be extended through the said lot; that they sold parts of said lot to suit mechanics and others who desired to build houses thereon, and the same was not very long after well improved. The city has, since the sale, extended very much in that direction, and the said pieces of ground are now among the most beautiful and densely built parts of the city, with the exception of one vacant spot on the corner of Fifth and Walnut streets, and three small spaces on the west side of Fifth street. They state that there are built upon said lot the Roman Catholic Church, a large and splendid building, St. Vincent's Orphans' Asylum, another building belonging to the Sisters of Charity, and the African church, all costly structures, and devoted to pious and benevolent uses; besides there are thirty-four persons with their families, living on said lots, to wit: James Y. Love, Chapman Coleman, Robert C. Thompson, John Carrell, Wm. P. Thompson, Samuel Gwathmey, Jacob Keller, Wm. F. Pettit, Huddleston, William Merton, Andrew Buchannan, Solomon Wooters, William E. Culver, William Taylor, Ira Stout, Rev. Robert Abell, James S. Prather, John Rowan, Augereau Gray, Joseph Knight, Spencer Clarke, William E. Graham, John P. Morton, William McLaughlin, William Wilson, Richard Newland, Bell, Jackson, Henry H. Porter, Wilkins Gray and George Hull. To none of these persons, or to their vendors, did your respondents sell and convey with any covenant of warranty, but only such title as they had did they sell. Your respondents sold and conveyed to William Ray, Ampleon Lampton, William Murton, Abraham Blanken, Baker, W. H. and R. P. Smith, Thos. H. Agars, William F.

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Pettit, S. Richardson, Barnett D. Meriwether, Willis Ashby, John Carrell, B. B. Gettings, William Mix, A. H. Moffett, N. and L. Meriwether, Samuel Dickinson, W. Douglass, R. Bullen and Winters; and all of said ground was sold, as aforesaid, to said persons. These respondents do not believe that this honorable court would, under the circumstances already disclosed, set aside said sale, although the said Whiting may have been dead at the time of the sale; yet they show, as an additional reason why the same should not be disturbed, that the said Whiting or his heirs are indebted to them in many thousand dollars, besides the residue of said mortgage debt, to wit: Upon a judgment in your honorable court at the November term, 1822, for five hundred dollars, with interest thereon from the 25th day ot January, 1821, and the costs of the action of debt in which the same was rendered. Also the amount of a judgment in this court, rendered at the same term, for five thousand one hundred and thirty dollars, with interest thereon from the 23d of November, 1820, and the costs in the action of debt in which the same was rendered. Also the amount of a judgment rendered in this court at same time, for nineteen hundred dollars, with interest thereon from the 4th of January, 1821, and the costs in the action ot debt in which the same was rendered. Also the amount of a judgment rendered in this court, at the same term, for one thousand dollars, with interest thereon from the 7th day of December, 1820, and the costs of the action of debt in which the same was rendered. Also the sum of four thousand six hundred and forty-nine dollars and fifty-seven cents, with interest thereon from the 6th of May, 1822, as appears by the note of said Whiting and others, here exhibited. Also the sum of four thousand nine hundred and sixty-three dollars and forty-one cents, with interest from the 6th of May, 1822, subject to a credit of $97 40, as appears by the note of said Whiting and others here also exhibited. The judgments aforesaid are referred to as a part hereof; they are in the name of your respondents against Ruggles Whiting, Thanier Whiting, and William Stackpole, all of which sums are due and unpaid, and the parties owing the same, or bound therefor, were insolvent, and continued to be so until their deaths respectively; and your respondents believe that they are all dead. These respondents say that they have been informed that the said Johnsons, some time since, pretended to several persons who were resident on said ground that they had some kind of claim thereto, and that the said persons, for the sake of peace, purchased all pretence of title which they had; and these repondents believe that the names of the said Johnsons are used by the said pretended representatives of said Whiting without their knowledge or consent.

Having fully answered these respondents, pray that the said sale may be confirmed in all respects, and that the said bill may be dismissed and their costs adjudged to them, &c.

PIRTLE.

This day, George Gwathmey, cashier of the Office of Discount and Deposit of the Bank of the United States at Louisville, Kentucky,

made oath before me, a Justice of the Peace for Jefferson County, that the matters and things stated in this bill as stated from his own knowledge are true, and as stated the information of others he believes them to be true.

Given under my hand on the 2d day of May, 1834.

DANIEL C. BANKS, *J. P. J. C.*

And afterwards, to wit: at the May term in the year 1835, (until which time this cause was continued,) came the parties aforesaid, by their counsel and by consent, this cause is placed on the issue docket for trial.

And the complainants for replication to the defendants answer, say that the statements in the answer so far as they contradict the allegations in the bill are untrue, and that the matters and things set forth in their bill are true.

And at a subsequent day of the term of the court aforesaid, came the complainants and defendants, by their counsel, and filed the following agreements in this cause, to wit:

It is agreed that Mrs. Enfield Johnson held the life estate, and G. J. Johnson one of the complainants the remainder in five acre lot No. 9, as appears by a copy of G. J. Johnson's, sen. will, marked No. 2, and G. J. Johnson first named, owned part of slip No. 2, by purchase, who mortgaged to James D. Breckenridge, as appears by a copy of mortgage deed No. 1, in 1818, for purposes therein named, that Whiting held judgments against said G. J. Johnson the co-complainant as apppears by exhibits No. 4 and 5, that said Breckenridge and Johnson joined in the mortgage deed to the Bank, without any other and further title than that which is recited in said deed and exhibits No. 1 and No. 2, but he had judgments against said Johnson, as appears by the exhibits Nos. 4 and 5, the effect of which and of their process, as appears in said exhibits, is not in any way precluded, nor the legal effect of the agreement of Breckenridge, Johnson and Whiting in exhibit No. 3, hereby permitted to be read, but their execution only admitted as they purport to be, but all objections to their being competent evidence is reserved.

That R. Whiting, to all appearance, at the time of the decree and sale, was insolvent, not having so far as known or could be made on execution any visible means.

That G. J. Johnson the co-complainant and judgment debtor to Whiting, was also insolvent at that time, and so remains to this time.

It is admitted that the Bank pulled down a plain brick dwelling-house, as appears in said will No. 2, on said lot where Fifth Cross street, if extended, would run and extend said street to Walnut street, and they sold, as stated in the answer to different persons, and the improvements stated of the Roman Catholic Church and others, extension of the street and other improvements have been made and put upon the ground, and that the persons named are living on the lot aforesaid.

That R. Whiting and William Stackpole are both dead, and reputed insolvent at the time of death. It is admitted that G. J. John-

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son did settle with several persons residing on the premises and released as to them alone from all claim on his part, but Mrs. Enfield Johnson has not released as to any one. The denial of the authority from the two Johnsons to use their names is waived.

The representatives and heirs of Whiting do not deny that the debts of R. Whiting, *et al.*, stated in the answer and notes are due, but their waiver of denial is not to prejudice them in any pleadings or state of case that may arise subsequent to those now in the case. The requisitions of letters of administration is waived, and it is agreed that Richardson, one of the complainants, is the administrator.

June 5th 1835. LOVERING,
PIRTLE.

It is admitted further, that Ithanier Whiting left this country about ten years since for Mexico, and has since resided there, that when he left he had very inconsiderable property, but is now reputed worth some eight or ten thousand dollars.

LOVERING,
PIRTLE.

And on the next day of said term, the court being sufficiently advised of and concerning the premises, do decree and order that the complainants' bill be dismissed and that they pay to the defendants their costs by them about their defence in this behalf expended.

And at a subsequent day of said term, came the complainants by their counsel, and prayed an appeal in this cause to the Supreme Court of the United States, which is granted upon their entering into bond in the clerks' office of this court within thirty days, with James Suddeth, security, in the penalty of $500 conditioned according to law.

This indenture made and concluded at Louisville, in the county of Jefferson, and commonwealth of Kentucky, this twelfth day of November, in the year of our Lord one thousand eight hundred and eighteen, by and between Gabriel J. Johnson and Elizabeth Johnson, wife of the said Gabriel J. Johnson of the first part, and James D. Breckenridge of the second part, witnesseth: that the said first party for, and in consideration of, the sum of twelve thousand dollars to them, in hand paid, by the said party of the second part, the receipt whereof they do hereby acknowledge, they, the said Gabriel and Elizabeth his wife, have given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell, alien, release, convey and confirm, unto the said second party, and unto his heirs and assigns, forever, three certain tracts or parcels of land, lying and being in the county of Jefferson aforesaid, and described as follows, to wit: lot No. 9 in said Louisville, now occupied by Anderson Miller, and two lots on Cross street, No. 5, adjoining said lot No. 9, and said two lots fronting sixty feet on Cross street, No. 5, and all the right, title and interest, claim, or demand, which the said Elizabeth, wife of the said Gabriel J., has, or hereafter can have to the premises, or to any part or parcel thereof, to have, and to hold the said granted and bargained premises, and the appurtenances thereof, unto him, the said James D., and unto his heirs and assigns, to his and their use, benefit, and behoof, forever, in trust, nevertheless, for the uses

and purposes hereinafter expressed, and the said Gabriel J. for himself, his heirs, executors and administrators, hereby covenants, grants, and agrees to and with the said James D., and with his heirs, executors, administrators, and assigns, that at and until the insealing and delivery of these presents, he, the said Gabriel J., is well seized in fee of the premises, that he has good right, full power, and lawful authority to sell and convey the same in manner aforesaid, with the covenants aforesaid, and as hereinafter *returned*, that the said premises are free and clear of all incumbrance, and that he, the said Gabriel J. and his heirs, shall and will at all times hereafter, warrant and defend the premises, and every part and parcel thereof against all lawful claims, provided, nevertheless, the said James D., his heirs and assigns, shall have and hold the said premises and appurtenances in trust for the uses and purposes, hereinafter created and declared. with full power to sell, grant, and convey the said premises or any part thereof for the uses and purposes and in manner as hereinafter stated, described, and set forth; that is to say, whereas the said James D. Breckenridge has this day, at the request, and for the use of, the said Gabriel J. Johnson, become holden and bound for the said Johnson, in the sum of twelve thousand dollars, by assigning and endorsing for the said Johnson, his three certain notes or obligations, payable at the Office of Discount and Deposit of the United States Bank, in said Louisville, for the sum of four thousand dollars, each one of said notes payable the first day of February next, one other note of the said sum of four thousand dollars, payable on the first day of May next, and the other note payable for the said sum of four thousand dollars, on the first of August next, all said notes made payable to Ruggles Whiting or order, and which three notes are this day made, executed, assigned or endorsed, as aforesaid, to the said Whiting for the purchase of one-fourth part of a steamboat. Now, therefore, it is declared by the said parties, that the uses and purposes for which said premises are conveyed in trust are for the sole purpose of securing the said Breckenridge from the notes aforesaid, and from all such other notes, obligations, bonds, bills and contracts, as to the said Breckenridge shall at any time hereafter, make, execute, or accept, or endorse, for the benefit of the said Gabriel J. Johnson, and at his request, and to secure the punctual payment of the same, and to furnish the said Breckenridge with the means to pay and take up any and all such notes, obligations, bonds, bills, and contracts, as the said Breckenridge has signed, endorsed, or assigned, or such as he may so sign, execute, accept, or endorse for the said Gabriel J. Johnson, as aforesaid, at his request, and for his use and benefit, and free power and authority is hereby given and granted to the said Breckenridge, and to his heirs and assigns, to sell and convey the said premises or any part thereof, to raise and satisfy the sums which fall due on said respective notes, bonds, bills, or contracts, and which shall not at their respective maturity be otherwise paid, satisfied, discharged, and taken up by the said Gabriel J. Johnson, or by his heirs, executors or administrators in manner following, that is to say, in case the said Gabriel J. Johnson shall at any time neglect to pay, satisfy, discharge,

and take up any and all such notes, bonds, bills, and contracts as they respectively fall due and become payable, it shall be lawful, and it is hereby covenanted, granted, and agreed, that the said Breckenridge, his heirs, executors, and administrators, and assigns, from time to time, may sell as much of the premises at public sale for ready money, as shall be sufficient to pay and satisfy the sums then due from the said Gabriel J. and all costs and charges thereon, and convey the estate so sold to the purchaser or purchasers in fee simple, and the said Gabriel shall forthwith on said sale, deliver possession of the premises so sold to such purchaser or purchasers or to their assigns, and the tract or tracts, interest or estate, so to be sold as aforesaid, for the purposes aforesaid, shall be sold at said Louisville, and the time and place of sale shall be advertised at least one week in some newspaper then printed in the town of Louisville, previous to the day of sale, and it be found necessary to make sale of any part of the premises under this deed of trust, for the purposes aforesaid, the two aforesaid lot adjoining on lot No. 9 and fronting on Cross street, shall be first sold, and it is further covenanted, granted, and agreed between the parties, that the said Johnson shall continue to have, hold, occupy, possess and enjoy the premises and every part and parcel thereof, with the appurtenances, rent free, until a sale thereof shall be made for the purposes aforesaid. But the said Johnson shall not at any time commit waste thereon or render any part thereof of less value nor suffer others so to do, and the said Breckenridge shall at any time hereafter, on request and at expense of said Johnson, re-convey the said premises, or such part and portion thereof as shall remain unsold, provided, at the time of such request the said Breckenridge shall not then be in any manner holden or liable to pay any money on any such note, bill, bond, obligation or contract, nor in any way injured or damnified thereby.

In testimony whereof the parties hereunto set their hands and seals the day and year first above written.

GA. J. JOHNSON, [SEAL.]
ELIZABETH JOHNSON. [SEAL.]

Executed and delivered and acknowledged in my presence.

JOHN H. CRANE,
WILL. C. KEAS,
HENRY McMINTRY,
W. F. THOMAS.

I, the clerk of the county court of Jefferson county, in the State of Kentucky, do certify, that on this day, Gabriel J. Johnson and Elizabeth his wife, came personally before me in my office, and acknowledged and delivered deed as and for their act and deed; that I examined the said Elizabeth privily and apart from the said Gabriel her husband, and having shown and explained the said deed to her, she again acknowledged and delivered the same deed as and for her act and deed, and declared she had done so of her own free will and consent, without the threats, persuasions or coercion of her said hus-

band, and was willing the same deed should be recorded, and not wish to retract her said acknowledgment; whereupon I have recorded the same deed in my said office.

Witness my hand this 17th day of March, 1819.

WORDEN POPE,

A Copy.—Test: WORDEN POPE, *Clerk.*

By GEORGE W. GWIN, *D. C.*

Being wholly resigned to the will of God, I Gabriel J. Johnson, of Louisville, in the county of Jefferson, and State of Kentucky, and being low and weak in body, but of sound disposing mind and memory, do make and ordain, this my last will and testament. My five acre lot in said town, whereon I now live, with the improvements thereon, I give and devise to my wife Enfield, for and during her natural life, and at her death I give and devise the same lot, with all the appurtenances, unto my son Gabriel J. Johnson, jr., and his heirs and assigns forever. Item.—I have purchased for my son, Benjamin William Johnson, a ten acre lot in said town, to be conveyed to him by Forts Cosby, and I give and devise the same lot with all the appurtenances to the said Benjamin William and his heirs and assigns, forever. Item.—I give and devise to my son Thomas Johnson, and his heirs and assigns, forever, my corner lot adjoining the public square in said town with all the appurtenances. Item.—I devise to my said wife all my slaves and personal estate, in trust that she shall allot, set apart, and deliver to my said son Benjamin William, one third thereof as soon as he shall settle himself and separate from the family, which said part I give and devise to him the said Benjamin William and his heirs and assigns forever. Also that she shall set apart, allot and deliver to my said son Gabriel, one third part of the said slaves and personal estate, which I give to him and his heirs and assigns forever. And also that she shall allot, set apart and deliver to my said son Thomas one third part of said slaves and personal estate, which I give to him and his heirs and assigns forever. But my said wife shall hold and retain during her natural life my negro woman Laurenda, and as much of my household furniture and said slaves and personal estate as her convenience and support shall require, nor shall the shares of said Gabriel or Thomas be delivered to them before they arrive at lawful age, or marry. Item.—All the rest and residue of my real estate I devise to my executors, hereinafter named, or such as shall act in trust, to be sold on a credit of six, twelve and eighteen months, and at such time as in their discretion they shall deem best, and the proceeds of such sale or sales I give and bequeath to my said sons their heirs and assigns, to be equally divided between them, the sale of said land shall be publicly advertised four weeks previous to such sale. Item.—It is my will and desire that my just debts shall be paid out of such debts as are owing to me, and if the debts due me are not sufficient for that purpose, I direct that as much of the least valuable part of my property to my family be sold to make up the deficiency. It is my will and desire that when my said son Gabriel Jones shall obtain possession of the lot herein before devised to him, then the same with the improvements thereon not made by him, and also the lot

belonging to my son Ben. William as aforesaid, and also the lot devised to my son Thomas, and the improvements thereon not made by him, shall be valued by commissioners appointed by the Jefferson circuit court, and that the valuation of each lot as aforesaid shall be made equal to each of my said sons out of my estate. Item.—All property herein before given to my said wife during her natural life, and remaining at her death, shall be equally divided between my three sons aforesaid. Item.—It is my will and desire, and I hereby allow that my said son Gabriel shall build for himself, before the death of his mother, upon the lot herein devised to him, such house or houses as his necessities or conveniences may require, at such place or places as will not interfere with the convenience of his said mother. Lastly: I hereby nominate and appoint my said wife, Enfield Johnson, Thomas Prather, and my said son Gabriel, executors and executrix of this my last will and testament, hereby revoking all other wills by me heretofore made.

In witness whereof, I have hereunto set my hand and affixed my seal this 26th day of April, in the year of our Lord eighteen hundred and fifteen.

GA. J. JOHNSON.

Signed, sealed and published by the testator as and for his last will, in presence of us:

WORDEN POPE,
J. M. PAYNE.

At a county court held for Jefferson county at the court-house in Louisville, on the eighth day of May, 1815, the within instrument of writing, purporting to be the last will and testament of Gabriel J. Johnson, deceased, was produced in court and proved by the oath of Worden Pope, a subscribing witness thereto, and at a court held for said county on the twelfth day of June, 1815, the same was proved by the oath of Joseph M. Payne, a subscribing witness thereto, and ordered to be recorded, and is recorded in my office.

Test: WORDEN POPE, *Clk.*
A Copy. Test: WORDEN POPE, *Clk.*

Ruggles Whiting hath sued G. J. Johnson in the Jefferson circuit court upon two notes of four thousand dollars each, and upon one of which the said Johnson is confined in the prison rules, upon which notes I am endorser. Now I agree that said Johnson may be dischargd from the prison rules in the one case, and may not be imprisoned in the other, and that I will not object on that ground to a want of due diligence on the part of said Whiting in attempting to render me liable as endorser, it being the wish of both parties to liberate Johnson from the prison rules without diminishing the recourse of Whiting or increasing or diminishing any responsibility of said Breckenridge that may exist, and any liability of mine that might exist or be made, shall be as great and no greater in both the cases as though said Johnson had taken the oath of an insolvent debtor.

February 9, 1820. JAMES D. BRECKENRIDGE.
February 9, 1820.—Attest: J. H. CRANE.

I agree to the within, and further agree to stand liable and chargeable on said judgment, and on any execution which may hereafter be issued thereon, in the same manner as if no execution had ever been made, or writs of execution had ever been issued in said cases, and will pay all taxable costs in said suits and on said executions, office fees, &c. &c. &c. counsels' fees excepted.

G. J. JOHNSON.

Louisville, February 9, 1820.—Attest: JOHN H. CRANE.

In consideration of the above and two foregoing contracts, I hereby agree that said Johnson may leave the prison bounds without incurring the penalty of his prison bounds bonds, either against the principal or security, but without prejudice to my claim on said judgment, notes, or executions against said Johnson as promisor, or against said Breckenridge as endorser.

Witness my hand and seal the 25th day of February, 1820.

R. WHITING. [SEAL.]

Attest: JOHN H. CRANE.

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable John P. Oldham, sole Judge of the Jefferson Circuit Court, in the commonwealth aforesaid, at the courthouse in the city of Louisville, on the 16th day of November in the year 1819.

R. WHITING, *assee. of J. D. Breckenridge, plff.*, against GABRIEL J. JOHNSON, *deft.* } On petition and summons.

Be it remembered that heretofore, that is to say, on the 29th day of July, in the year one thousand eight hundred and nineteen, the plaintiff, by J. H. Crane, Esq., his attorney, filed in the clerk's office of the court aforesaid his petition, and therewith a note against the said defendant, which are in the words and figures following, to wit:

JEFFERSON CITCUIT, *sct:*

Ruggles Whiting, plaintiff, states that he holds a note on the defendant, Gabriel J. Johnson, in substance as followeth:

$4,000. LOUISVILLE, KENTUCKY, *November* 12, 1818.

On the 1st day of May, 1819, I promise to pay James D. Breckenridge, or order, four thousand dollars without defalcation, payable and negotiable at the office of discount and deposit of the United States at said Louisville for value received.

G. J. JOHNSON.

On which is the following assignment:

For value received, I assign the within note to Ruggles Whiting.

JAMES D. BRECKENRIDGE.

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Whereby the plaintiff hath become the proprietor thereof, of which the defendant hath had due notice, yet the said debt remains unpaid, wherefore he prays judgment for his debt, and damages for the detention of the same, together with his costs, &c.

RUGGLES WHITING.
J. H. CRANE, *Attorney.*

The Commonwealth of Kentucky to the Sheriff of Jefferson county, greeting:

We command you to summon Gabriel J. Johnson to appear before the judge of our circuit court for Jefferson circuit, at the court-house in Louisville, on the third day of our next November term, to answer a petition (of which the annexed is a true copy) and have then there this writ.

Witness: Worden Pope, clerk of our said court at the court house aforesaid, the 29th day of July, 1819, and in the 28th year of the Commonwealth.

WORDEN POPE.

JEFFERSON CIRCUIT, *sct:*

Ruggles Whiting, plaintiff, states that he holds a note on the defendant, Gabriel J. Johnson, in substance as follows:

$4,000. LOUISVILLE, KENTUCKY, *November* 12, 1818.

On the 1st day of May, 1819, I promise to pay James D. Breckenridge, or order, four thousand dollars, without defalcation, payable and negotiable at the office of discount and deposit of the Bank of the United States at said Louisville, for value received.

G. J. JOHNSON.

On which is the following assignment:

For value received, I assign the within note to Ruggles Whiting.

J. D. BRECKENRIDGE.

Whereby the plaintiff hath become the proprietor thereof, of which the defendant hath had due notice, yet the said debt remains, wherefore he prays judgment for his debt, and damages for the detention of the same, together with his costs, &c.

RUGGLES WHITING.
J. H. CRANE, *Attorney.*

A copy.—Test: WARDEN POPE, *Clerk.*

On which summons the sheriff made the following return, to wit:

Came to hand 6th of August, 1819, and executed on G J. Johnson 24th day of the same month by delivering to him a true copy of the within.

JOHN H. MILLER, *D. S.*, for
A. STEELE, *S. J. C.*

And at a court held for the circuit and at the court-house aforesaid on the 16th day of November, 1819, came the attorney for the said

plaintiff, and defendant not appearing, although solemnly called therefor, it is considered by the court that the plaintiffs recover against the said defendant the sum of four thousand dollars current money, the debt in the petition mentioned with interest thereon, at the rate of six per centum per annum, from the 1st day of May, 1819, till paid, and also his costs by him about his suit in this behalf expended, and the said defendant in mercy, &c.

And upon which judgment the clerk of the court aforesaid issued a writ of capias adsatisfaciendum, which, and the sheriff's return thereon, are in the words and figures following, to wit:

The Commonwealth of Kentucky to the Sheriff of Jefferson county, greeting:

We command you to take Gabriel J. Johnson, if he be found within your bailiwick, and him safely keep, so that you have his body before the judge of our circuit court for the Jefferson circuit at the court-house in Louisville, on the 12th day of February, 1820, to satisfy Ruggles Whiting, assignee of James D. Breckenridge, the sum of four thousand dollars current money, with interest thereon at the rate of six per centum per annum from the 1st day of May, 1819, till paid, which the said Whiting lately in our said court recovered against him for debt, also six dollars ninety-seven and a half cents adjudged to him for his costs by him about his suit in this behalf expended, whereof the said Johnson is convicted, as appears to us of record, and have you then and there this writ.

Witness: Warden Pope, clerk of our said court at the court-house aforesaid, the 6th day of December, 1819, and in the 28th year of the Commonwealth.

WORDEN POPE.

Either notes of the Bank of Kentucky or its branches will be accepted in discharge of the whole of this execution.

Test: WORDEN POPE, *Clerk.*

Came to hand December 9, 1819, and executed on defendant, and committed him to the bonds.

J. D. BRECKENRIDGE.

Security bond herewith returned.

JOHN H. MILLER, *D. S.*, for
A. STEELE, *S. J. C.*

COMMONWEALTH OF KENTUCKY:

I, Edmund P. Pope, clerk of the Jefferson circuit court, in the Commonwealth aforesaid, and keeper of the seal thereof, hereby certify that the annexed two pages contain a full, true, and complete transcript of the record of proceedings had in the case therein mentioned, except that a copy of the petition, which should precede the summons, as in the original, is copied under said summons in said transcript.

In testimony whereof, I hereunto set my hand, and affix the impress of said seal, at the city of Louisville, this 2d day of May, 1835, and in the forty-third year of the Commonwealth.

[L. S.]

EDMUND P. POPE.

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COMMONWEALTH OF KENTUCKY:

Pleas before the honorable John P. Oldham, sole judge of the Jefferson circuit court, in the commonwealth aforesaid, at the court-house in the city of Louisville, on the 16th day of November, 1819.

R. WHITING, *assee. of J. D. Breckenridge, plff.*, against GABRIEL J. JOHNSON, *deft.* } On petition and summons.

Be it remembered that heretofore, that is to say, on the 17th day of August, 1819, the plaintiff, by J. H. Crane, Esq., his attorney, filed in the clerk's office of the court aforesaid his petition, and therewith a note against the said defendant, which are in the words and figures following, to wit:

JEFFERSON COUNTY, *sct:*

Ruggles Whiting, plaintiff, states that he holds a note on Gabriel J. Johnson, alias Ga. J. Johnson, defendant, in substance as followeth:

$4,000. LOUISVILLE, KENTUCKY, *November* 12, 1818.

On the 1st day of August, 1819, I promise to pay James D. Breckenridge, or order, four thousand dollars, without defalcation, payable and negotiable at the office of discount and deposit of the Bank of the United States in said Louisville, for value received.

GA. J. JOHNSON.

On which is the following assignment:

For value received, I assign the within note to Ruggles Whiting.

JAMES D. BRECKENRIDGE.

Whereby the plaintiff has become the proprietor thereof, of which the defendant hath had due notice, yet the said debt remains unpaid, wherefore he prays judgment for his debt, and damages for the detention of the same, together with his costs.

RUGGLES WHITING.

By his attorney, J. H. CRANE.

$4,000. LOUISVILLE, KENTUCKY, *November* 12, 1818.

On the 1st day of August, 1819, I promise to pay to James D. Breckenridge, or order, four thousand dollars, without defalcation, payable and negotiable at the office of discount and deposit at the Bank of the United States in said Louisville for value received.

GA. J. JOHNSON.

On which is the following assignment, to wit:

For value received, I assign the within note to Ruggles Whiting.

JAMES D. BRECKENRIDGE.

Whereupon the clerk of the court aforesaid issued the following summons, to wit:

JEFFERSON CIRCUIT, *sct:*

Ruggles Whiting, plaintiff, states that he holds a note on the defendant, Gabriel J. Johnson, in substance as followeth:

$4,000. LOUISVILLE, KENTUCKY, *November* 12, 1818.

On the 1st day of August, 1819, I promise to pay to James D. Breckenridge, or order, four thousand dollars, without defalcation, payable and negotiable at the office of discount and deposit of the Bank of the United States at said Louisville, for value received.

GA. J. JOHNSON.

On which is the following assignment:

For value received, I assign the within note to Ruggles Whiting.

J. D. BRECKENRIDGE.

Whereby the plaintiff hath become the proprietor thereof, of which the defendant hath had due notice, yet the said debt remains unpaid, wherefore he prays judgment for his debt, and damages for the detention of the same, together with his costs, &c.

RUGGLES WHITING.
J. H. CRANE, *Attorney.*

A copy.—Test: WORDEN POPE, *Clerk.*

The Commonwealth of Kentucky to the Sheriff of Jefferson county, greeting:

We command you to summon G. J. Johnson to appear before the judge of our circuit court for the Jefferson circuit at the court-house in Louisville on the third day of our next November term, to answer a petition, of which the above is a true copy, and have then there this writ.

Witness: Worden Pope, clerk of said court at the court-house aforesaid, the 17th day of August, 1819, and in the 28th year of the Commonwealth.

WORDEN POPE.

Came to hand 8th of August, and executed on the within named defendant the 24th day of the same month by delivering to him a true copy of the within.

JOHN H. MILLER, *D. S.* for
A. STEELE, *S. J. C.*

And at a court held for the circuit and at the court-house aforesaid, on the 16th day of November, 1819, came the attorney for the plaintiff, and the said defendant not appearing, although solemnly called; therefore, it is considered by the court that the plaintiff recover against the said defendant the sum of four thousand dollars current money, the debt in the petition mentioned, with interest thereon at the rate of six per centum per annum from the 1st day of August, 1819, till paid, and also his costs by him about his suit in this behalf expended, and said defendant in mercy, &c.

On which judgment the clerk of the court aforesaid issued a writ of fieri facias, which, and the sheriff's return thereon, are in the words and figures following, to wit:

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The Commonwealth of Kentucky to the Sheriff of Jefferson county, greeting:

We command you that of the estate of Gabriel J. Johnson, alias Ga. J. Johnson, late of your bailiwick, you cause to be made the sum of four thousand dollars current money, with interest thereon at the rate of six per centum per annum, from the 1st day of August, 1819, till paid, which Ruggles, assignee of James D. Breckenridge, lately in our circuit court for the Jefferson circuit, hath recovered against him for debt; also, six dollars ninety-seven and a half cents adjudged to him for his costs by him about his suit in this behalf expended, whereof he is convicted, as appears to us of record, and that you have the said four thousand dollars, with interest, and six dollars ninety seven and a half cents, before the judge of our said court, at the court-house in Louisville, on the 12th day of February, 1820, to render to the said Whiting his debt, interest, and costs aforesaid, and have then there this writ.

Witness: Warden Pope, clerk of our said court at the court-house aforesaid, the 6th day of December, 1819, and in the 28th year of the Commonwealth.

WORDEN POPE.

Note.—That either notes of the Bank of Kentucky or its branches will be accepted in discharge of the whole of this execution.

Test: WORDEN POPE, *Clk.*

Came to hand December 9, 1819, and no property found.

JOHN H. MILLER, *D. S.*, for
A. STEELE, *S. J. C.*

COMMONWEALTH OF KENTUCKY:

I, Edmund P. Pope, clerk of the Jefferson circuit court in the Commonwealth aforesaid, and keeper of the seal thereof, do hereby certify that the foregoing four pages contain a full, true, and complete transcript of the record of proceedings had in the case therein mentioned.

In testimony whereof, I hereunto set my hand and affix the impress of the said seal, at the city of Louisville, this 1st day of May, 1835, and in the 43d year of the Commonwealth.

[L. S.]

EDMUND P. POPE.

$9,931 37. LOUISVILLE, KENTUCKY, *August* 22, 1821.

Sixty days after date, I Ruggles Whiting, principal, promise to pay the President, Directors, and Company of the Bank of the United States, or order, ninety-nine hundred and thirty-one dollars and thirty seven cents, "without defalcation," negotiable and payable at the office of discount and deposit of said bank at Louisville, Kentucky, for value received, with interest thereon at the rate of six per centum per annum thereafter if not paid at maturity.

Witness *our hands:*

RUGGLES WHITING.

$4,963 41. LOUISVILLE, KENTUCKY, *March* 6, 1822.

Sixty days after date, we, Ruggless Whiting (as principal) and William Stackpole, William F. Peterson & Co. and J. H. Crane, (sureties,) do promise to pay jointly and severally to the President, Directors, and Company of the Bank of the United States, or order, forty-nine hundred and sixty-three dollars and forty-one cents, "without defalcation," negotiable and payable at the office of discount and deposit of said bank at Louisville, Kentucky, for value received, with interest thereon at the rate of six per centum per annum thereafter if not paid at maturity.

Witness our hands:

RUGGLES WHITING,
WM. STACKPOLE,
JOHN H. CRANE,
W. F. PETERSON & Co.

$4,649 57. LOUISVILLE, KENTUCKY, *March* 6, 1822.

Sixty days after date we, Ruggles Whiting, (as principal,) and William Stackpole, William F. Peterson & Co. and John H. Crane, (sureties,) do promise to pay jointly and severally to the President, Directors, and Company of the Bank of the United States, or order, forty-six hundred and forty-nine dollars and fifty-seven cents "without defalcation," negotiable and payable at the office of discount and deposit of said bank at Louisville, Kentucky, for value received, with interest thereon at the rate of six per centum per annum thereafter if not paid at maturity.

Witness our hands:

RUGGLES WHITING,
WM. STACKPOLE,
JOHN H CRANE,
WM. F. PETERSON & Co.

Debt, - - - - - -	$9,931 37
Interest from 24th October, 1821, till paid, 2d March, 1827, - - - - - -	3,190 07
	13,121 44
	7,000 00
By amount of sales due 2d March, 1827, - -	6,121 44
Interest to 2d June, 1835, - - - -	3,011 29
Cost of suit and sale, - - - -	40 00
	$9,172 73

Debt, - - - - - -	$500 00
Interest 25th January, 1821, till 25th May, 1835, -	430 00
Debt, - - - - - -	5,130 00
Interest 23d November, 1820, till 23d May, 1835, -	4,463 10
Debt, - - - - - -	1,900 00
Interest 4th January, 1821, till 4th June, 1835, -	1,643 50
Debt, - - - - - -	$1,000 00
Interest 7th December, 1820, until 7th June, 1835,	870 00

Debt, - - - - - - -	4,649 57
Interest 6th May, 1822, until 6th June, 1835, -	3,670 25
Debt, - - - - - - -	4,963 41
Credit, - - - - - - -	94 40
	4,866 01
Interest 6th May, 1822, till 6th May, 1835, -	3,795 48
	8,661 49
Amount over, - - - - - -	33,429 15
Now due, - - - - - - -	$42,090 64 7

LOUISVILLE, *April* 28, 1835.

The deposition of Simon S. Goodwin, to be read in evidence in a suit in chancery on a bill of review pending in the circuit court of the United States for the district of Kentucky, wherein Paulina S. Whiting and Helen B. Whiting, heirs at law of Ruggles Whiting, deceased, and James Richardson, administrator of said decedent, and Enfield Johnson and Gabriel J. Johnson are complainants, and the president, directors, and company of the Bank of the United States are defendants. Deponent being of lawful age, and first duly cautioned and sworn, deposes and says: That he was well acquainted with the decedent Ruggles Whiting, who left Louisville and the State of Kentucky in the fall of the year 1826 for his father's residence in Dover, State of Massachusetts, and did not return, but deceased there, as deponent is informed and believes.

His, R. Whiting's, oldest child, Paulina, was born in the summer of 1806, but deponent cannot recollect the month. His youngest child, Helen B. Whiting, was born in the autumn or fall of the year 1809, in the month of October, to the best of deponent's recollection, in Boston, Massachusetts; deponent was well acquainted with the family residing near them at the time, and also James Richardson, neither of whom have ever been in Kentucky, so far as deponent knows, but have always resided in Massachusetts.

SIMON S. GOODWIN.

JEFFERSON COUNTY, *sct:*

Subscribed and sworn to before me this 28th day of April, 1835.

SAMUEL DICKINSON, *J. P. J. C.*

All objections waived and informalities in taking and directing this deposition.

A. LOVERING, *for complainants.*
PIRTLE, *for bank.*

Interrogatories to be put to Samuel G. Atwell in the suit, James Richardson, et al. *vs.* the president, directors, and company of the Bank United States for the circuit court of the United States, seventh circuit, Kentucky district.

First interrogatory on the part of the complainants. Did you accompany Ruggles Whiting above named from Louisville, Kentucky,

to Massachusetts, shortly before his death. If so, state when you left Louisville—whether you remained with him until the latter event; and if so, state when and where he died, and his condition of health after leaving Louisville; whether able to have returned in safety. State the day of the month of his decease, if recollected.

Second interrogatory on the part of complainants. Did you file or forward by safe hands to file with the clerk of the circuit court of the United States for Kentucky a demurrer and answer for Whiting, aforesaid, in the suit of the Bank of the United States vs. Whiting et al. for foreclosure on the lot No. 9, in Louisville, &c. as the counsel for said Whiting in that suit in the summer or autumn of 1826, and did he leave the cause unattended to farther on the belief and information that it was not prepared for trial? Please state what occurred on this point.

HAGGIN and LOVERING,
Plaintiffs' Counsel.

Cross interrogatories on the part of the defendants, hereby waiving all objections to the time and place of filing such interrogatories, but held as properly filed. As to second interrogatory on part of complainants, was not this done in Louisville long before Ruggles Whiting left Louisville.

The deposition of Samuel Y. Atwell, of Glouster, in the county of Providence in the State of Rhode Island and Providence Plantations, taken before Samuel Steere, judge of the honorable Court of Common Pleas for said county, on the eighth day of November, 1834, at said Glouster, to be read in evidence in a certain suit now pending in the circuit court of the United States, seventh circuit, Kentucky district, holden at Frankfort, wherein Whitings, representatives and heirs are complainants, and the President, Directors and Company of the Bank of the United States are defendants. The said deponent being first carefully examined, cautioned and sworn to tell the whole truth, doth depose and say, that he lives at a greater distance than one hundred miles from the said town of Frankfort; and in reply to the following interrogatories, says in answer to the first interrogatory by complainants: I accompanied Ruggles Whiting, formerly of Boston, Massachusetts, from Louisville, Kentucky, to Philadelphia, Pennsylvania, some time in December, 1826, at which last mentioned place we parted. Some time in January or February, 1827, I went to Dover, Massachusetts, and saw Ruggles Whiting at the house of his father, Aaron Whiting. I remained with said Ruggles Whiting until his decease, which event happened the latter part of February, 1827; I do not recollect the day. He died at the residence of his said father in said Dover. Ruggles Whiting was in very poor health from the time we left Louisville until his decease, and at no time after I first saw him at Dover was he able to leave his room, or with safety to have performed the shortest journey. After said Whiting's decease, I was employed by his friends to proceed to Kentucky for the purpose of settling and winding up the business of said Whiting in that State, but was prevented from performing the same by unforseen circumstances.

In answer to second interrogatory by complainants, says: I attended as counsel for Mr. Whiting, a session of the circuit court of the United States, at Frankfort, in the case of the Bank of the United States *vs.* Whiting *et al.* foreclosure on lot No. 9, in Louisville; this was sometime, I think, in the year 1826, and either while at Frankfort, or after my return to Louisville. I prepared such pleadings in said case as I deemed important, which I think were filed in said cause or forwarded to Frankfort, to be filed in the same. I cannot now recollect the particulars, I recollect that Ruggles Whiting frequently mentioned said case during his last sickness, and that it was his opinion, as well as my own, that the said case was still open for litigation, and that there was sufficient time to prepare the same for trial. What the pleadings were that were prepared by me as aforesaid, I do not now recollect.

In answer to the cross-interrogatories by defendants, says, the pleadings above mentioned were prepared, filed, or forwarded to be filed in said cause, before Ruggles Whiting left Louisville, and further deponent saith not. SAMUEL Y. ATWELL.

I, Samuel Steere, Judge of the honorable Court of Common Pleas, as aforesaid, do certify and say, that at the request of the complainants above named, I caused the above named deponent in the foregoing deposition, to come before me in Glouster at the time in the caption before stated, because said witness resides at a greater distance than one hundred miles from said Frankfort, the place of holding said court of the United States, as is stated, and did not cause notice to be given to the adverse party of the time and place of taking the same; nor has said party any agent or attorney known to me within that distance. That th said deponent was by me carefully examined, cautioned, and sworn then and there to testify the whole truth; that the said deposition was wholly reduced to writing by said witness in my presence; and that he then and there subscribed the same before me; that I am not counsel or attorney for either of the said parties, or interested in the event of said suit. All which is certified to said court as the cause wherefore this deposition is taken, and for the manner it is done.

SAMUEL STEERE, *Judge C. C. P.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, PROVIDENCE, } *ss:*

I, Dexter Randall, Clerk of the Court of Common Pleas, within and for said county, being a court of record, do hereby certify that Samuel Steere, before whom the preceding affidavit was sworn, is a justice of said court duly qualified to act as such. That the signature above is the proper signature of the said Samuel, and full faith and credit are due to his official acts and attestations.

[SEAL] In witness whereof I have hereunto set my hand and affixed the seal of said court at Providence, this 12th day of November, A. D. 1834.

DEXTER RANDELL, *Clerk.*

Interrogatories to be put to Aaron Whiting, in the suit James Richardson, &c. *et al. vs.* the President, Directors, and Company of Bank United States. Seventh circuit court United States, Kentucky district. Interrogatories on the part of complainants, to Aaron Whiting.

First interrogatory. When did Ruggles Whiting abovenamed, decease; state the day and month if recollected, and how long had he been at your house previous, and was he confined to the house during the time.

Second interrogatory by complainants. State if you know the age of Helen Bullen Whiting, and whether she and her sister Paulina, have either of them been out of the State of Massachusetts; if so, of New England. State if they are the children of said Ruggles.

Interrogatories on the part of the defendants, waiving objections to the time and place of filing the interrogatories, and agreeing that Theron Metcalf, Esq., of Dedham, Massachusetts, shall take the deposition.

PIRTLE, *P. D.*
LOVERING, *P. Q.*

The deposition of Aaron Whiting, of Dover, in the county of Norfolk, and commonwealth of Massachusetts, by consent herewith on the third day of November, in the year of our Lord, 1834, at the dwelling house of said Whiting in said Dover, in consequence of the age and infirmity to be read in evidence in a certain suit now pending in the circuit court of the United States for the seventh circuit court and Kentucky district, holden at Frankfort, wherein James Richardson, administrator, and Paulina S. Whiting and Helen B. Whiting, children and heirs at law, Enfield Johnson and Gabriel J. Johnson are complainants, and the President, Directors, and Company of the Bank of the United States are defendants. The said deponent being first carefully examined, cautioned, and sworn to tell the whole truth, doth depose and say that he lives at a greater distance than one hundred miles from the said Frankfort, and is too feeble and infirm to travel to any public office to give his deposition; said deponent further says in reply to the first interrogatory hereto following, on the part of the complainants, that his son Ruggles Whiting, died on the twenty-sixth day of February, in the year one thousand eight hundred and twenty-seven. That he came to the house of the deponent in Dover, in Massachusetts, on the evening of the twenty-fourth or twenty-fifth day of December next preceding his death, in very ill health; that he was confined to said house for one month at least next before his death; that he went to Boston a distance of sixteen miles once after he came to the deponent's house, and that he was in worse health ever after he went to Boston. and went *of* house very little if at all afterwards. To the second interrogatory on the part of the complainants hereto following. The deponent says that Helen B. Whiting is about twenty-five years old, but that his memory does not enable him to state the day of her birth, he therefore refers to "a Family Record" in a

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quarto bible in his house, in which bible he finds this entry, viz: "Helen Bullen Whiting, born October 25th, 1809" which he doubts not is a true entry, and according to the fact, said deponent further says that he has no knowledge that either Helen Bullen Whiting, or Paulina S. Whiting, her sister, was ever out of the State of Massachusetts. He further says that they are the children of his son Ruggles Whiting.

AARON WHITING.

I, Theron Metcalf, by consent and agreement selected to take this deposition, do certify and say that at the request of the complainants above mentioned, I caused the above named deponent to come before me at the time and place in the caption stated, because said witness resides at a greater distance than one hundred miles from Frankfort, the place of holding said court of the United States as is stated; and said deponent being also too infirm to travel and attend at any public office to give his deposition, and did not cause notice to be given to the adverse party who does not, as I know or believe, reside within one hundred miles of taking the same, nor said party, any agent, or attorney known to me within that distance. That the said deponent was by me carefully examined, cautioned and sworn then and there to testify the whole truth. That the said deposition was wholly reduced to writing by me in the presence of said witness, and that he then and there subscribed the same in my presence; and that I am not counsel or attorney for either of the parties, or interested in the event of the cause. All which is certified to said court as the cause wherefore this deposition is taken, and for the manner it is done.

THERON METCALF,
Of Dedham, in the Commonwealth of Massachusetts,
Justice of the Peace.

The deposition of Levi Tyler taken this 21st day of May, A. D. 1835, to be read in evidence in a suit now pending in the circuit court of the United States for the seventh circuit and district of Kentucky, to be read in evidence in a suit now pending between Whiting's heirs *et al. vs.* Bank of the United States on a bill of review as agreed at the conclusion.

1st. Question by complainants. Was you present at the sale of five-acre lot No. 9, and part of slip No. 2, by the commissioner, Samuel Dickinson, under a decree of foreclosure by Bank of the United States?

Answer. I was present at a sale of a five-acre lot, and part or parts of what is called the slips in front thereof, in Louisville, by Dickinson, as commissioner, under a decree of foreclosure by the United States Bank agent, Johnson. What the numbers of said lot and slip are deponent does not now remember.

2d. Question by same. Was both lot and part of slip offered and sold together to the Bank?

Answer. I believe they were, but the commissioners' report in said case is referred to for greater certainty on that subject.

3d. Question by the same. Would the lot and slip have sold for more if sold separate, and how much?

Answer. My opinion is that they would or might have sold for more if sold separately at the time of the sale, but how much more I cannot undertake to say at this time; I suppose they would not have sold for much more—probably five hundred or one thousand dollars at most, the property certainly, in my judgment, would not have sold for the balance of the decree in said case.

4th. Question by same. What is the whole ground now worth?

Answer. I cannot say with any certainty, but would think the whole ground might be worth at this time some forty or fifty thousand dollars; however this is merely a guess of mine, it may not be worth that much, and it may be worth more.

5th. Question by same. What did the Bank sell for, and at what rate, any part, and at what advance, and in what time?

Answer. I do not know; I have understood and believe the Bank sold for about fifteen or sixteen thousand dollars. I don't know at this time what rate any part thereof was sold for, nor at what advance, nor at what time. I do know that lots in Louisville have advanced in price and value very much since the sale to the Bank, and by the Bank, and especially the property referred to.

6th. Question by same. Was there an order to open Fifth Cross street at the time of sale, and did the Bank open according to that order or extend the street laid out by the order?

Answer. I do not recollect whether there was an order to open Fifth Cross street at the time of the sale to the Bank or not. I know the said street was and is now opened, and believe it was done by the Bank, but of this I am not positive, and further saith not.

LEVI TYLER.

This deposition is allowed to possess all requisite formalities, and no objection made to reading for having been taken during term, nor that it is not sworn to, and the lot and slip named, are lot and slip No. 9, and part of slip No. 2, but defendants object to the competency of the 1st clause of the answer to the fifth question.

PIRTLE,
LOVERING.

May 21*st*, 1835.

The deposition of Samuel Dickinson, of lawful age and duly sworn, taken at the on the 16th day of May, 1835, to be read in evidence in a cause now pending in the circuit court of the United States, wherein Paulina S. Whiting *et al.* is plaintiff, and president, directors and company of the Bank of the United States are defendants.

1st Question by complainants. Was or was not the whole of the land offered and sold together?

Answer. The whole was sold together to the highest bidder, in accordance with the decree as well as I can recollect.

2d Question. Would the two tracts if sold separate have brought more.

Answer. If sold in only two lots I am of opinion that they would not have sold for much more.

3d Question. Would the land have sold for more if sold in lots as usually sold, and how much?

Answer. I think it probable that the ground would have sold for more if it had been laid off in small lots and so advertised. At that time there was not much rage for speculation, and it was not deemed necessary to divide it into small parcels. Neither do I believe that I possessed any authority to do so under the decree. I cannot form a conjecture as to how much more the ground would have sold for if divided, than it did.

4th Question. Did the bank subsequently sell it off for more and how much?

Answer. The bank did subsequently have Fifth Cross street opened and extended through the ground, and had it laid off into lots of thirty feet fronting on said street, by which the bank may have realized four or five thousand dollars, in the lapse of as many years.

5th Question. What would the ground now sell for?

Answer. The ground would sell now on reasonable credits, for thirty-eight or forty thousand dollars.

Question by defendants. Please state whether or not the piece of ground called the slip, and the lot were or were not included in the same enclosure, and whether they were separated by any apparent boundaries or not?

Answer. The slip and the five acre lot are included in the one enclosure. The slip was in front of the five acre lot towards Green street, but did not extend to it. I recollect no distinct boundary at the sale. I sold all together not knowing of any boundary between them, and considering it all as one tenement, and further deponent saith not.

SAMUEL DICKINSON.

The above deposition may be read without oath and as having all formalities.

PIRTLE,
LOVERING.

The following is a copy of the record referred to and made part of the complainants' bill, to wit:

Be it remembered that heretofore, to wit, on the 14th day of April, in the year of our Lord one thousand eight hundred and twenty-three, came the President and Directors of the Bank of the United States, by their attorney, into the clerk's office of the court aforesaid, and filed the following bill in chancery, against Ruggles Whiting, &c. to wit:

To the honorable the judges of the seventh circuit court of the United States for the district of Kentucky in chancery sitting. Your orators the President, Directors and Company of the Bank of the United States, would respectfully represent that on the ninth day of August, 1820, Ruggles Whiting, who is made defendant to this bill being indebted to them in the sum of $9,931 37-100 payable at their office of discount and deposit at Louisville, Kentucky, on said day,

together with James D. Breckenridge, Enfield Johnson, and Gabriel J. Johnson (the said Enfield and Gabriel J. also made defendants) executed to your orators a mortgage or deed of trust upon certain real estate in said circuit and district to secure the payment of the debt aforesaid. The said mortgage was duly admitted to record in the proper office, and is marked (A) and filed as part hereof. They state that said debt is still due and unpaid, to wit, said $9,931 37 with interest thereon from the 24th of October, 1821, which will more fully appear by said Whiting's note, filed also as part hereof, and marked (B). In tender consideration whereof, and forasmuch as your orators are without remedy in the premises at law, and relievable only in equity, may it please the court to grant the united writ of subpœna against the defendants directed, &c. that they may be compelled on oath to answer this bill; that by decree the defendants' equity of redemption of, in and to, the mortgaged premises, or so much thereof as may be necessary be ordered to sale, to satisfy said demand with interest and costs, and grant to them such other and further relief in the premises as to equity belongs, and their case merits, and they as in duty bound will ever pray, &c.

DENNY, *P. Q.*

EXHIBITS REFERRED TO IN THE FOREGOING BILL, TO WIT:

Exhibit A.

This indenture, made this ninth day of August, one thousand eight hundred and twenty, between James D. Breckenridge, Gabriel J. Johnson, Enfield Johnson, and Ruggles Whiting, of Boston, in the State of Massachusetts, the others above named of the county of Jefferson, and State of Kentucky, of the first part, and the president and directors and company of the Bank United States, of the second part: Whereas, the said Gabriel, and the said James, as his security, are indebted to the second part the sum of nine thousand nine hundred and thirty-one dollars and thirty-seven cents, negotiable and payable at their office of discount and deposit in Louisville, in the State aforesaid: And whereas the said parties of the first part have made agreements and arrangements between themselves whereby the said Whiting has assumed the payment of the said debt, and has executed and delivered his note of this date for the same, payable sixty days after date to the party of the second part, at their office aforesaid, and upon which the said Whiting has paid the discount: And whereas, also, the party of the second part has agreed to permit the said Whiting, his heirs or assigns, to renew the said note for five times more, for sixty days each time, provided he or they shall pay the discount thereon at the time of each of the said renewals; also, if he or they shall pay one-third part of the said note at the end of the said fifth renewal, the party of the second part agrees to renew a note for the remaining two-thirds of the first named sum for three times more, for sixty days each time, provided the said Whiting, his heirs or assigns, shall pay the discount on the last mentioned sum at the

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time of each renewal; and also, if he or they shall pay one half of the last mentioned note at the end of the third renewal, then, and in that case, the party of the second part agrees to renew a note for the remaining half of the last mentioned note for three times more, for sixty days each time, provided the discount thereon at the time of each renewal. And it is further agreed, that a failure to pay the said discounts and reduce the sums aforesaid by payments, shall be good cause to refuse to renew the notes before mentioned, and the right of the said Whiting to do so shall cease, and no longer be binding on the party of the second part: And whereas the party of the first part, in consideration of accepting the said Whiting as debtor, in place of the said James and Gabriel, for the first named sum in this deed, are willing, and intend by these presents, to secure the payment of the same, and the said discounts, at the time and in the manner before stipulated, by mortgaging to the party of the second part the two tracts, parcels, or pieces of land hereinafter conveyed.

Now therefore this indenture witnesseth, that the party of the first part, for and in consideration of the premises, and the sum of one dollar current money of the United States, to them in hand by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, release, enfeoff, convey, and confirm, unto the party of the second part, and to their successors and assigns, a certain tract or parcel of land, with all the appurtenances, containing five acres, lying and being in the said town of Louisville, described and known on the plan or map thereof by No. 9, in the range of five-acre lots, bounded on the west by Centre street, and on the south by Walnut street; also, one other piece of ground, part of the slip No. 2, and adjoining the said five-acre lot No 9, on part of the northwardly side and eastwardly of, and adjoining, Fifth Cross street continued, with a front thereon of sixty feet, and being the same width back two hundred and fifty-two feet, and is now enclosed, with part of the said five-acre lot, with a plank fence—and all the estate, right, title, claim, interest, and fee of the party of the first part, of, in, and to, the said two tracts or parcels of land, with all the appurtenances, to have and to hold the same, unto the party of the second part, and to their successors and assigns, to their only proper use and behoof forever.

Provided, nevertheless, and these presents are on this condition, that if the said Whiting, or his assigns, do and shall well and truly pay the discounts on the notes before mentioned, and shall reduce and pay off the said sum of nine thousand nine hundred and thirty-one dollars and thirty-seven cents at the time and in the manner herein stipulated, then these presents, and every matter and thing herein, shall cease, determine, and become utterly null and void; and the estate herein conveyed to the said Whiting, his heirs or assigns, as a security as between him and them and the said Gabriel for the debt and discounts so paid for him by the said Whiting, or his assigns, and also for all moneys or property now due to him, the said Whiting, by the said Gabriel; and it is agreed by the parties of the first part

that after satisfaction of the said demands due by the said Whiting to the party of the second part, and by the said Gabriel to the said Ruggles, that the said estate, or the residue thereof, or any surplus in money by the sale or sales thereof, shall be paid or conveyed to the said Enfield Johnson, or her assigns; and the parties agree that the said two tracts or parcels of land shall, at the request of said Whiting in writing, be sold to meet the payment of the said nine thousand nine hundred and thirty-one dollars and thirty-seven cents, at the times herein before stipulated, upon giving at least twenty days' previous notice of the time and place of sale in some newspaper then printed in Louisville aforesaid: provided that the president and directors of the said office shall not give further time to make the said payments of the principal, which they are not bound to do, but which will rest in their will and pleasure Should they, however, give further time to make the said payments, the like sale, on the like notice, and times, and request, shall be made to meet the said payments; and the president and directors of the said office shall have like power or authority to sell the said lands, on the same notice and time, to meet the said payments, in case the said Whiting shall fail to meet the same at the times, or either of them, before agreed upon; and in case a sale or sales, made as aforesaid, the bank shall reserve and retain the title to the said lands until the said payments of the said debts shall be made to the bank. And the said Gabriel covenants and agrees with the party of the second part, and with their successors and assigns, that he will, and his heirs, executors, and administrators shall warrant and forever defend the said two tracts, or parcels of land, with the appurtenances, unto the parties of the second part, and to their successors and assigns, against all and every person or persons whatever lawfully claiming or to claim the same. The said Whiting is hereby invested with the actual possession of the said two tracts or parcels of land, with all the appurtenances, and receive the rents and profits thereof, and pay the taxes on the premises, until a sale shall be made as aforesaid. The words of "*of* Boston, in the State of Massachusetts, the other above named," interlined.

In witness whereof, the parties of the first part have hereunto set their hands the day and year first written.

JAMES D. BRECKENRIDGE, [SEAL.]
GA. J. JOHNSON, [SEAL.]
ENFIELD JOHNSON, [SEAL.]
RUGGLES WHITING, [SEAL.]

Signed, sealed, and delivered, in presence of

JOHN H. CRANE.

I, the clerk of the county court of Jefferson county, in the State of Kentucky, do certify, that on this day the within named James D. Breckenridge, Gabriel J. Johnson, and Ruggles Whiting, came personally before me, in my office, and acknowledged and delivered the foregoing deed as and for their act and deed.

Witness my hand this 16th August, 1820.

WORDEN POPE.

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I, the clerk of the county court of the county of Jefferson, in the State of Kentucky, do certify, that on this day the within named Enfield Johnson came personally before me in my office and acknowledged and delivered the foregoing deed as and for her act and deed, and that I have recorded the said deed in my said office.

Witness my hand 17th August, 1820.

WORDEN POPE.

Exhibit B.

LOUISVILLE, KENTUCKY, *August* 22, 1821.

$9,931 37.

Sixty days after date, I Rugg'es Whiting, principal, promise to the president, directors, and company of the Bank of the United States, or order, ninety-nine hundred and thirty-one dollars, thirty-seven cents, "without defalcation," negotiable and payable at the office of discount and deposite of said bank at Louisville, Kentucky, for value received, with interest thereon at the rate of six per centum per annum thereafter, if not paid at maturity. Witness *our* hands.

RUGGLES WHITING.

Upon which the following subpœna in chancery was issued, to wit:

The United States of America to the Kentucky district, greeting. You are hereby commanded to summon Ruggles Whiting, Enfield Johnson, and Gabriel J. Johnson to appear before the judges of our seventh circuit court of the United States in and for the Kentucky district, at the capitol, in Frankfort, on the first Monday in May next, to answer a bill in chancery exhibited against them by the president, directors, and company of the Bank of the United States; and this they shall in no wise omit, under the penalty of four hundred dollars each, and have then there this writ.

In testimony whereof, John Marshall, Esq., chief justice of the Supreme Court of the United States hath caused the seal of our said court to be hereunto affixed, this 14th day of April, 1823, and of our independence the 47th.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return. April 20, 1823. Executed on Ruggles Whiting, the other defendants not found.

JOHN SUTTON, defendant for
CHAPMAN COLEMAN, *M. K. D.*

Alias subpœna, to wit: The United States of America to the Marshal of the Kentucky district, greeting: You are hereby again commanded to summon Ruggles Whiting, Enfield Johnson, and Gabriel Johnson to appear before the judges of our seventh circuit court of the United States of America in and for the Kentucky district, at the capitol in Frankfort, on the first Monday in November next, to answer a bill in chancery exhibited against them by the president, directors, and company of the Bank of the United States; and this they shall in no wise omit, under the penalty of four hundred dollars, and have then there this writ.

In testimony whereof, John Marshall, Esq., chief justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed this 23d day of June, 1823, and of our independence the 47th.

Attest: JNO. H. HANNA, C. C. C. K. D.

This subpoena is not to be executed on Whiting.

Attest: JNO. H. HANNA, C. C. C. K. D.

Marshal's return. Executed August 1823, on Gabriel J. Johnson, Enfield Johnson not found. J. SUTTON, D. for
C. COLEMAN, M. K. D.

Plurias subpœna, to wit: The United States of America to the Marshall of the Kentucky district, greeting: You are hereby again commanded to summon Ruggles Whiting, Enfield Johnson, and Gabriel J. Johnson to appear before the judges of our seventh circuit court of the United States, in and for the Kentucky district, at the capitol in Frankfort, on the first Monday in May next, to answer a bill in chancery exhibited against them by the president, directors, and company of the Bank of the United States; and this they shall, in no wise omit under the penalty of four hundred dollars; and have then there this writ. In testimony, whereof, John Marshall, Esq. chief justice of the supreme court of the United States, hath caused the seal of our said court to be hereunto affixed, this 22d day of November, 1824; and of our independence the 49th.

Attest: JNO. H. HANNA, C. C. C. K. D.

To be executed on Enfield Johnson only.

Attest: JNO. H. HANNA, C. C. C. K. D.

Marshal's return. Executed on Enfield Johnson, on the 18th of March, 1821.

JOHN MILTON, D. M. for
CHAPMAN COLEMAN, M. K. D.

And afterwards, to wit: at rules holden in the clerks office of the court aforesaid, in the month of January, 1826, until which time this cause was continued on the rules, came the complainants aforesaid, by their counsel, and on his motion, it is ruled that the defendants file their answers herein, on or before the April rules, or on failure thereof, the complainants' bill will be taken for confessed.

At which time, to wit: at rules holden as aforesaid, in the month of April, and year 1826; until which time this cause was continued, came the complainants, by their counsel, and the defendants still failing to appear and answer the complainants' bill, although ruled so to do. It is therefore ruled, that the same be taken for confessed; and the cause set for hearing.

And afterwards, to wit: at the May term of the court aforesaid, and year 1826, came the complainants, by their counsel; and it

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appearing to the satisfaction of the court, that the subpœnas in this case have been duly served upon the defendants, and they having failed to answer the complainants' bill, the matters and things therein are taken for confessed; and thereupon the cause coming on for hearing upon the bill taken for confessed, and the exhibits and the court being sufficiently advised, doth order and decree, that unless the defendants shall, on or before the sixth day of the next term of this court, pay to the complainants, at their office of discount and deposit, at Louisville, Kentucky, the sum of nine thousand nine hundred and thirty-one dollars, thirty-seven cents, lawful money of the United States, with interest thereon, at the rate of six per centum per annum, from the 24th October, 1821, that their equity of redemption of, in, and to, the mortgaged premises, in complainants' bill mentioned, will be forever barred and foreclosed, and the same ordered to be sold, &c., and unless the defendants having notice of this decree shall show cause against the same, on or before the day aforesaid.

And afterwards, to wit: at the November term of the court aforesaid, and the year 1826: this day, this cause coming on for final hearing upon bill and exhibits, and the said defendants having failed to pay complainants the sum of money ascertained to be due them by said Whiting, as specified in the interlocutory decree, herein before rendered, according to the requisitions thereof; and they having been served, as it appears, by the officers return and affidavit filed with a true eopy of said decree, and the court being now sufficiently advised, it is decreed and ordered, that said defendants be, and they are for ever barred and foreclosed of all equity or right of redemption of, in, and to, the mortgaged premises in complainants' bill and exhibit mentioned, to wit: that certain tract or parcel of land, with all the appurtenances, containing five acres, lying and being in the town of Louisville, Kentucky, described and known in the plan or map thereof, by the number nine in the range of five-acre lots, bounded on the west by Centre street, and on the south by Walnut street. Also, one other piece of ground, part of the slip No. 2, and adjoining the said five-acre lot on part of the northwardly side, and eastwardly of and *and* adjoining Fifth Cross street, continued with a front thereon of sixty feet, and the same width back, two hundred and fifty-two feet, and enclosed in August, 1820, with part of said five-acre lot, with a plank fence. It is further decreed and ordered, that Samuel Dickinson, George G. Gwathmey and Alfred Thruston be, and they are hereby appointed commissioners; herein, they or either of whom are empowered and directed to make public sale on the premises to the highest bidder, of said two tracts or parcels of land, with their appurtenances, or so much thereof, as may be necessary to pay and satisfy to complainants the sum of nine thousand nine hundred and thirty-one dollars, and thirty-seven cents, lawful money of the United States, with interest thereon, at the rate of six per centum per annum, from 24th October, 1821, till paid—the cost of this suit, and making the sale, including the sum of fifteen dollars, to be allowed said commissioners for their services, to be sold on a credit

of six months, after having first advertised the time and place of sale, for at least three weeks in some public newspaper printed in Louisville, taking from the purchaser or purchasers bond to the complainants, for the payment of the purchase money, with interest from the date, with two or more good securities, unless complainants themselves should become the purchasers; and said commissioners, or either of them, shall convey and deliver possession of such of said property as may be sold to the purchaser or purchasers; and the marshal of this district is ordered, if required, to attend, remove obstructions, and aid in the delivery of the possession of said property as aforesaid. A lien is hereby retained and reserved in favor of the complainants, on such of said premises as may be sold for the payment of the purchase money thereof, and interest till paid.

And afterwards, to wit: at the May term of the court aforesaid, and year 1827: This day, Samuel Dickinson, one of the commissioners appointed to carry into effect the former decree, herein having made report of the sale of the mortgaged property therein mentioned to complainants, and of a deed of conveyance from him to them, of said property, and the same having been considered by the court, it is decreed and ordered that said report and deed be, and they are hereby approved and confirmed, in all things that a writ of habere facias possessionem be awarded; complainants to put them in possession of said property, that they have leave to withdraw said deed.

The following is a copy of the commissioners' report, returned and filed herein, to wit:

"In compliance with the foregoing decree, the undersigned, one of the commissioners appointed therein to make sale of the mortgaged premises, advertised the same, on the 31st day of January, 1827, for sale, or so much thereof, as should be sufficient to satisfy and pay the debt, interest and costs, in the "*Focus of politicks, commerce, and literature.*" And appointed the sale to take place on the premises, on the second day of March, 1827, between the hours of eleven o'clock A. M. and three o'clock P. M. upon a credit of six months, for lawful money of the United States, with interest from the date, and two or more good securities, and a lien retained upon the premises sold, until the purchase money should be paid as the advertisement and publisher's certificate will show, and herewith returned. Accordingly, on the second day of March, 1827, and between the hours aforesaid, the undersigned commissioner attended on the premises aforesaid, and offered and cried the same for sale to the highest bidder, or as much thereof, as should be sufficient to satisfy and pay the debt, interest and all costs, and upon the terms and conditions aforesaid, when and where the complainants become the purchasers of the whole of the said mortgaged premises, at and for the sum of seven thousand dollars; and no one having bid a greater sum, the same was cried and struck off to them as the highest and best bidders. The deed of conveyance from the defendants by the acting commissioner to the complainants, is herewith returned; and all of which is respectfully submitted.

SAMUEL DICKINSON, *Acting Commissioner.*

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The following is a copy of the advertisement and printer's certificate, referred to in the foregoing report, to wit:

Commissioner's sale.

Pursuant to a decree of the circuit court of the United States, for the seventh circuit, and district of Kentucky, pronounced at the November term, 1826, in a suit in chancery, wherein the president, directors and company of the Bank of the United States, are complainants; and Ruggles Whiting, Enfield Johnson, and Gabriel J. Johnson are defendants, the subscribers (or one of them) appointed by said court commissioners to carry said decree into effect, will proceed on the second day of March, 1827, upon the premises to sell, at public sale, to the highest bidder, on a credit of six months, the following property, to wit: that certain tract or parcel of land with all the appurtenances, containing five acres, lying and being in the town of Louisville, Kentucky, described and known on the map or plan thereof, by the number 9, in the range of five-acre lots, bounded on the west by Centre street, and on the south by Walnut street. Also, one other piece of ground, part of the slip No. 2, and adjoining the said five-acre, on part of the northwardly side, and eastwardly of and adjoining fifth Cross street, continued with a front thereon of sixty feet, and the same width back, and two hundred and fifty two feet, and enclosed, in August, 1820, with part of said five acre lot, with a plank fence; or so much of said property as may be necessary to pay and satisfy to complainants the sum of nine thousand nine hundred and thirty-one dollars thirty-seven cents, lawful money of the United States, with interest thereon, at the rate of six per centum, from the 24th of October, 1821, and the costs of suit, and of making this sale. The sale will commence upon the premises, between the hours of 11 o'clock, A. M. and 3 o'clock, P. M. of the said second day of March, 1827; and the purchaser or purchasers will be required to give bond to the complainants for the payment of the purchase money, with interest from the date, with two or more good securities; a lien is retained and reserved, in favor of the complainants, on such of said premises as may be sold for the payment of the purchase money thereof, and interest until paid.

SAMUEL DICKINSON,
GEORGE C. GWATHMEY, } *Commissioners.*
ALFRED THRUSTON,

January 31*st.*

Certificate to wit:—This is to certify that the annexed advertisement has been published every week in the "Focus of Politics, Commerce and Literature;" a public authorized newspaper, printed in Louisville, Kentucky, from the 31st day of January, 1827, until the second day of March, 1827.

Given under my hand this 2d day of March, 1827, as printer and publisher.

JOHN T. MORTON, *Publisher.*